

97-075

FILED BY CLERK
KS DISTRICT COURT
SW. DIST. 10
DEC 22 4 14 PM '97
TOPEKA, KANSAS

Kristy L. Hiebert, #14716
Assistant Attorney General
Office of the Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(785) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 3

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
vs.)
)
EQUALNET CORPORATION,)
)
Defendant.)
_____)

Case No. 97 CV 1608

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 22 day of December, 1997, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Kristy L. Hiebert, Assistant Attorney General. Defendant EqualNet Corporation appears by and through Joseph M. Weiler.

Whereupon, the parties advise the Court that they have stipulated and agree to the following matters without trial or adjudication of any issue of law or fact:

1. This Court has jurisdiction over the parties hereto and the subject matter herein.
2. Carla J. Stovall is the duly elected Attorney General for the State of Kansas. In her

capacity as Attorney General, she is authorized to bring actions to enforce the provisions of the Kansas Consumer Protection Act (K.S.A. §50-623 *et seq.*).

3. EqualNet is a Delaware based company. EqualNet's principal place of business is 1250 Woodbranch Park Drive, Houston, Texas. EqualNet has done business in the State of Kansas.

4. EqualNet denies any wrongdoing as alleged by the Attorney General. This Consent Judgment does not constitute any evidence or admission of any kind. This Consent Judgment does not constitute a finding by any court that EqualNet has engaged in any act or practice declared unlawful by the Kansas Consumer Protection Act or any other laws, rules, or regulations. Further, by entering into this Consent Judgment, EqualNet does not thereby admit or consent to any individual liability for the actions of EqualNet, its officers, agents, employees, representatives, independent contractors, marketers, and assigns.

NOW, THEREFORE, on the basis of these findings, and for the purposes of effecting this Consent Judgment, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

A. BUSINESS PRACTICES

1. Defendant EqualNet, its officers, agents, and employees, are permanently enjoined from engaging in any unconscionable or deceptive acts or practices in the conduct of their business in the State of Kansas, and shall comply with such state laws, rules, and regulations, as now constituted or as may hereafter be amended, which are applicable to all future sales presentations, activities, and solicitations in Kansas by or on behalf of EqualNet in connection with the offer or sale of telecommunication goods or services. EqualNet shall maintain and, as necessary, revise its procedures to reasonably ensure that all independent contractors, representatives and marketers also comply with the provisions of this paragraph.

2. In addition to complying with applicable state laws, EqualNet's future sales presentations, activities and solicitations in the State of Kansas shall comply with Federal Communications Commission (hereinafter "FCC") rules and regulations and other federal laws, as now constituted, or as may hereafter be amended, applicable to changing primary interexchange carriers, telemarketing, solicitations, and sales, which require that the company meet certain conditions before switching the consumer's long distance telecommunications carrier or service provider.

3. EqualNet shall maintain and, as necessary, revise its procedures to reasonably ensure that all employees, representatives, agents, marketers, and independent contractors who enroll consumers for long distance telecommunications service with EqualNet receive approval for the change only from the consumer to whom the telephone number is assigned, or an employee or agent of such consumer who represents that she or he has the authority to change the consumer's long distance telecommunications carrier and/or service provider, before switching that consumer's long distance telecommunications service.

4. EqualNet shall maintain and, as necessary, revise its compliance program to reasonably ensure that proper authorization for changes in service or carriers is given by consumers, and to provide for prompt discipline of employees, representatives, agents, marketers, or independent contractors for improper conduct in connection with the marketing, sale, and collection of EqualNet services.

5. EqualNet shall at no time make any of the following representations when soliciting a consumer to switch his or her long distance service to EqualNet:

a. That the consumer's long distance telecommunications service will remain with the

consumer's current long distance carrier and that EqualNet is only offering a supplemental plan or discount on behalf of the consumer's current long distance carrier, unless such representation is factually true.

- b. That EqualNet is a part of, a division of, or has any other relationship with AT&T, other than as a reseller of AT&T long distance telecommunications service or as an independent company that contracts with AT&T to supply AT&T long distance telecommunications facilities and lines to EqualNet's customers, unless such representation is factually true;
- c. That EqualNet's solicitor is paid by AT&T, unless such representation is factually true;
- d. That EqualNet is a facility-based long distance carrier, unless such representation is factually true;
- e. That the person soliciting the prospective customer on behalf of EqualNet is an employee or agent acting on behalf of or part of AT&T or any other long distance carrier, unless such statement is factually true; and
- f. That the long distance service will be provided at a lower rate or cost than the basic rates of a consumer's current long distance carrier, unless there is a factual basis to support the claim.

6. In all future telemarketing solicitations, EqualNet shall, before making any other statement except a greeting, disclose paragraphs 6(a), 6(b), and 6(c). During the solicitation, EqualNet must also disclose 6(d), 6(e), and 6(f).

- a. The employee, representative, agent, marketer or independent contractor's full name;

- b. That the employee, representative, agent, marketer or independent contractor is making contact on behalf of EqualNet;
 - c. That the purpose of the contact is to obtain authorization by the consumer to switch his or her current long distance service provider to EqualNet. The words "switch," "change," or "replace" shall be used in the communication;
 - d. That EqualNet is independent of, and not in any way a part of, AT&T, Sprint, or MCI, except as a reseller of AT&T, Sprint, or MCI long distance telecommunications service or as an independent company that contracts with AT&T, Sprint, or MCI to supply AT&T, Sprint, or MCI long distance telecommunications facilities and lines to EqualNet's customers. The provisions of this paragraph shall only apply in the event reference to AT&T, Sprint, or MCI's names is made by EqualNet in connection with the solicitation;
 - e. That EqualNet is a reseller of AT&T, Sprint, or MCI long distance telecommunications services. The provisions of this paragraph shall only apply in the event reference to AT&T, Sprint, or MCI's names is made by EqualNet in connection with the solicitation; and
 - f. If applicable, that there may be a service charge for switching long distance carriers.
7. EqualNet shall not switch a consumer's current long distance service provider to EqualNet unless a party who identifies himself as the consumer, or an employee or authorized agent of the consumer represents that he or she is authorized to make the switch, authorizes the switch, and EqualNet, at a minimum, complies with at least one of the following procedures:
- a. Obtain a written Letter of Agency ("LOA") signed by the consumer or an agent of

the consumer that represents he or she is authorized to change the long distance telecommunications service provider for the telephone number(s) at issue. The LOA shall be printed in a type and size that is clear and conspicuous, and shall contain and confirm:

- (i) the consumer's billing name and address;
- (ii) each telephone number to be covered by the change in long distance telecommunication service;
- (iii) a statement that the purpose of the LOA is to switch the consumer's current long distance service provider to EqualNet and to authorize EqualNet to submit on behalf of the consumer the required data to change the consumer's long distance service provider to EqualNet;
- (iv) notification, if applicable, that a fee may be charged by the local exchange carrier in connection with the change in long distance carriers;
- (v) the name of the EqualNet employee, representative, agent, marketer or independent contractor who solicited the switch of long distance service; and
- (vi) a statement that the consumer understands that only one long distance service provider may be designated as the consumer's long distance service provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional long distance providers (e.g., intralata or international calling), the LOA must contain separate statements regarding these choices.

- b. Obtain the consumer's authorization via an independent and qualified third party physically located separate from the EqualNet solicitor who obtained the consumer's

initial oral authorization. The confirmation shall include:

- (i) the consumer's billing name and address;
- (ii) each telephone number to be covered by the change in long distance telecommunications service;
- (iii) a statement that the purpose of the authorization is to switch the consumer's current long distance service provider to EqualNet and to authorize EqualNet to submit on behalf of the consumer the required data to change the consumer's long distance service provider to EqualNet; and
- (iv) notification, if applicable, that a fee may be charged by the local exchange carrier in connection with the change in long distance carriers.

c. Within three business days of the customer's request for a PIC change, EqualNet must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

- (i) the information is being sent to confirm a telemarketing order placed by the customer within the previous week;
- (ii) the name of the customer's current interexchange carrier;
- (iii) the name of the newly requested interexchange carrier;
- (iv) a description of any terms, conditions, or charges that will be incurred;
- (v) the name of the person ordering the change;
- (vi) the name, address, and telephone number of both the customer and the soliciting interexchange carrier;
- (vii) a postpaid postcard which the customer can use to deny, cancel or confirm a

service order;

(viii) a clear statement that if the customer does not return the postcard, the customer's long distance service will be switched within 14 days after the date the information package was mailed;

(ix) the name, address, and telephone number of a contact point at the Federal Communications Commission for consumer complaints; and EqualNet must wait 14 days after the information package is mailed to customers before submitting their PIC change orders to local exchange carriers. If customers have canceled their orders during the waiting period, EqualNet, of course, cannot submit the customer's orders to the local exchange carrier.

d. Obtain the consumer's electronic authorization, placed from one of the telephone numbers for which the long distance telecommunications service provider is to be changed, to change the consumer's long distance telecommunications service provider that confirms the following information:

(i) the consumer's billing name and address;

(ii) each telephone number to be covered by the change in long distance service provider;

(iii) that the purpose of the electronic authorization is to switch the consumer's current long distance telecommunications service provider to EqualNet and to authorize EqualNet to submit on behalf of the consumer the required data to change the consumer's long distance service provider to EqualNet; and

- (iv) notification, if applicable, that a fee may be charged by the local exchange carrier in connection with the change in long distance carriers.
- (v) if EqualNet elects to confirm sales electronically, it shall continue to maintain one or more toll free numbers exclusively for that purpose.

8. Within three (3) business days of the consumer's request for a change in telecommunication service, EqualNet shall place in first class United States mail, a one page sales confirmation letter to the consumer that states:

- a. That the information is being sent to confirm a change in long distance telecommunication service placed by the consumer within the previous week;
- b. That as a result of this change in telecommunications service, the consumer's long distance telecommunications service provider will be EqualNet;
- c. Any material terms, conditions, or charges that will be incurred, such as reoccurring monthly fees or minimum billing requirements;
- d. The name of the person ordering the change;
- e. The name, address and telephone number of both the consumer and the soliciting long distance carrier, *i.e.*, EqualNet;
- f. The address and telephone number of the Federal Communications Commission for consumer inquiries; and
- g. A toll free number of EqualNet for consumers to use if they have any questions regarding the change in their long distance service.

9. EqualNet shall maintain, and as necessary revise, customer service procedures to reasonably ensure that:

- a. Sufficient customer service personnel are available to enable consumers to resolve their accounts and complaints promptly.
- b. Telephone holding procedures shall not hang up on consumers when they call to dispute their charges or service;
- c. EqualNet shall not keep consumers on hold for more than five (5) minutes, unless the consumer is periodically informed that he or she is on hold and that a customer service representative will be able to assist the consumer shortly;
- d. Consumers will be able to speak with a customer service representative who will have the authority to credit accounts up to \$100.00, with supervisor approval, where appropriate, and to correct billing errors as needed.
- e. EqualNet shall prominently display EqualNet's toll free customer service number on the consumer's bill, clearly indicating that all disputes regarding charges and service are to be directed to that telephone number.
- f. EqualNet shall respond to any complaints received from the Office of the Kansas Attorney General and any other Kansas state agency by the time and manner specified therein, which time shall in no event be less than 10 business days, or within such time as provided by applicable law.

10. In any collection effort, neither EqualNet nor its agents shall send collection letters informing consumers that their account is past due before the payment due date. EqualNet agrees to cease efforts, whether through its own employees or through independent agents, to collect

charges from any consumer who has previously lodged a complaint alleging an unauthorized change in the consumer's long distance carrier as described under "Restitution," *infra*, or who does so within ninety (90) days of the filing of this Consent Judgment, provided the consumer's outstanding bills with EqualNet total \$100 or less. For complaining consumers having outstanding balances of more than \$100, should an outstanding balance still remain after restitution, EqualNet agrees to withdraw that consumer's account from third-party collection programs and to offer the consumer a reasonable payment plan, where appropriate. However, in the event the consumer rejects the payment plan or otherwise fails to make timely payments under the terms of the payment plan, EqualNet may then continue or initiate collection efforts. If EqualNet does terminate collection efforts under the terms of this paragraph, it shall notify any credit bureaus that received notice of the original past due account that the customer disputed the charge and the matter has been resolved.

11. Within thirty (30) days of the filing of this Consent Judgment, EqualNet shall provide the Attorney General with an acknowledgment that each officer, director, employee of management level, and active or future independent contractors of EqualNet has received a copy of this Consent Judgment and has certified to having read it.

12. For a period of five (5) years following the filing of this Consent Judgment, EqualNet will notify in writing the Attorney General of Kansas at 301 SW 10th Street, Topeka, Kansas 66612-1597 at least thirty (30) days prior to the effective date of any proposed change in EqualNet's corporate structure, such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution of any subsidiaries for the sale of telecommunication services, or any other change that may affect such party's compliance with obligations arising out of this Consent Judgment.

B. RESTITUTION

1. EqualNet shall credit against outstanding bills, if any, and shall otherwise reimburse, in accordance with Paragraph 2 of this Section B:

- a. Any consumer who has on file a written complaint with respect to EqualNet with the Kansas Attorney General's Office or any other Kansas state agency prior to or as of the filing date of this Consent Judgment, alleging that a switch to EqualNet's long distance service was unauthorized or was based upon misrepresentation to such consumer or the agent or employee of such consumer, and
- b. Any consumer from whom the Kansas Attorney General's Office or any other Kansas state agency receives written notice within ninety (90) days of the filing date of this Consent Judgment that a switch to EqualNet's long distance service was unauthorized or was based upon misrepresentation to the consumer.

2. Within one hundred and twenty (120) days of the date this Consent Judgment is filed, the State of Kansas shall provide EqualNet with copies of consumer complaints that appear to qualify under Sections B(1) and B(3). Within thirty (30) days following receipt of a complaint, EqualNet shall make restitution in the amount of:

- a. all service and switching charges associated with the initial switch to EqualNet and with switching the consumer back to its previous long distance telecommunications service provider, including fees charged by the consumer's local exchange carrier, less any credits or refunds previously issued by EqualNet to said consumer for such

service and switching charges; plus

- b. the difference between the consumer's bills from EqualNet and the amount that would have been charged by its long distance provider prior to the switch to EqualNet if EqualNet' rates were higher than those of the previous long distance service provider, less any credits or refunds previously issued by EqualNet

3. In the event that a consumer eligible for re-rating requests re-rating but fails to provide EqualNet either (i) a copy of the consumer's last bill for long distance service prior to switching to EqualNet, or (ii) written permission for EqualNet to contact the prior long distance carrier to obtain a copy of such bill or evidence of the applicable discount plan, then EqualNet shall make a written request to the consumer for such information at the consumer's address as indicated in the complaint by such consumer. If EqualNet does not receive the requested information in writing within sixty (60) days of the date of EqualNet's written request, the consumer shall not be eligible for re-rating.

4. Within two hundred and forty (240) days from the date of entry of this Consent Judgment, EqualNet shall provide to the Kansas Attorney General's Office, Consumer Protection Division, an alphabetical listing of the names and addresses of all consumers to whom EqualNet has provided refunds pursuant to this Consent Judgment, the date on which each refund was provided, and the total amount provided in refunds pursuant to Section B.2 hereof. Upon request, EqualNet agrees to provide the State of Kansas, within fifteen (15) days, any supporting documentation substantiating the amount of the refund or credit.

5. In the event that a representative of the Attorney General determines that there is a discrepancy in any payment, EqualNet shall be notified of such discrepancy and given ten (10)

business days to respond to the Attorney General's concerns, after which EqualNet and the Office of the Attorney General shall resolve any differences concerning the amount due and owing.

C. REPRESENTATIONS

EqualNet shall not represent or imply that any advertising procedure or other act or practice hereinafter used or engaged in by EqualNet has been required or approved, in whole or part, by the Kansas Attorney General, the Kansas Attorney General's Consumer Protection Division, or the State of Kansas or any of the state's agencies or agents.

D. PAYMENT TO THE STATE

1. EqualNet agrees to pay on or before February 28, 1998, the sum of \$20,427.27 to the Attorney General of the State of Kansas. This amount is not to be construed as a fine or civil penalty. The payee named on the cashier's check shall be the Office of the Kansas Attorney General.

2. In the event that EqualNet fails to make payment to the State by February 28, 1998, EqualNet agrees to reimburse the expenses of the State of Kansas, including, but not limited to, attorneys' fees and costs, attributable to any collection efforts necessitated by such default.

E. EFFECT OF THIS CONSENT JUDGMENT

This Consent Judgment shall fully and finally resolve any and all claims or allegations of deceptive or unconscionable acts or practices that were or could have been asserted by the Attorney General.

G. CHANGE OF LAW

In the event that the provisions of 47 C.F.R. §64.110 *et seq.* or any other state or federal law or regulation are amended, or in the event that a state or federal law is enacted in a matter which would render compliance with any term of this Consent Judgment, a violation of such law or

regulation, it is understood that EqualNet's compliance with such amended or newly enacted law or regulation will constitute compliance with the Consent Judgment. The remainder of the terms and conditions of the Consent Judgment shall not be affected thereby.

IT IS SO ORDERED

151 Hon. MARIA LUCKERT
District Court Judge

Approved:

State of Kansas *ex rel.*
Carla J. Stovall, Attorney General

EqualNet Corporation.

Carla J. Stovall by
Carla J. Stovall, #11433
Attorney General St. Lauck
DEPUTY ATTORNEY
GENERAL

Dean Fisher
Dean Fisher
General Counsel
EqualNet Corporation

Kristy L. Hiebert
Kristy L. Hiebert, #14716
Assistant Attorney General
Consumer Protection Division

Joseph M. Weiler
Joseph M. Weiler #13056
2101 SW 21ST ST.
Topeka KS. 66604
(785) 232-0753
Attorney for Defendant